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13 ADVANCE LIFTS, INC.

14 UNITED STATES DISTRICT COURT FOR  
15 THE NORTHERN DISTRICT OF CALIFORNIA

16 ADVANCE LIFTS, INC., an Illinois  
17 corporation,

18 Plaintiff,

19 v.

20 ORACLE AMERICA, INC., a Delaware  
21 corporation; FOLIO3 SOFTWARE, INC.,  
a California corporation; and BANC OF  
22 AMERICA LEASING & CAPITAL, LLC,  
a Delaware limited liability company,

23 Defendants.  
24

CASE NO. 4:21-cv-04361-SBA

**RE-NOTICE OF PENDING  
SETTLEMENT AND STIPULATION TO  
VACATE AND/OR EXTEND EXISTING  
DEADLINES**

**DECLARATION OF DAVID J. BEN-DOV;**

**ORDER AS MODIFIED BY THE COURT**  
~~[Proposed]~~

Action Filed: June 8, 2021

**RE-NOTICE OF PENDING SETTLEMENT AND  
STIPULATION TO VACATE AND/OR EXTEND EXISTING DEADLINES**

Plaintiff ADVANCE LIFTS, INC., Defendant ORACLE AMERICA, INC., Defendant FOLIO3 SOFTWARE, INC., and Defendant/Counterclaimant BANC OF AMERICA LEASING & CAPITAL, LLC, collectively identified as the “Parties,” pursuant to Local Rule 7-12, hereby: (1) notify the Court of a pending settlement agreement in principle among all Parties; and, (2) stipulate, and request that the Court enter an Order, to vacate and/or extend existing deadlines and calendared dates, as set forth below.

**BACKGROUND**

As the result of recent discussions, the Parties have reached a global settlement in principle of all claims among the Parties in the above-captioned matter. Consummation of this settlement requires preparation of a final settlement agreement to be executed by all Parties and the performance of certain acts by the Parties. The Parties are now actively engaged in completing these steps, but anticipate that it may take up to thirty (30) days to complete the settlement process. Upon completion of that process, the Parties would dismiss, with prejudice, all claims and counterclaims in this matter. In furtherance of the Parties’ global settlement in principle, and immediately prior to the reassignment of this matter, on August 24, 2021, the Parties submitted a Notice of Pending Settlement and Stipulation to Vacate and/or Extend Existing Deadlines, which was not considered by the Court. [Dkt #24].

On August 25, 2021, the Clerk provided a Notice of Reassignment of this matter [Dkt #28], and, on August 26, 2021, an Order Reassigning Case to this Court was entered. [Dkt #29]. On August 27, 2021, this Court entered a Case Management Scheduling Order for Reassigned Civil Case. [Dkt #30]. The Case Management Scheduling Order for Reassigned Civil Case retained the dates listed in the Order Setting Initial Case Management Conference [Dkt #6], rescheduled the initial Case Management Conference to September 16, 2021, and set the filing of a joint case management conference statement to September 9, 2021. [Dkt #30].

In the interests of judicial efficiency and to allow the Parties to focus their efforts on the completion of the settlement process, the Parties believe that vacating those filing deadlines, as

well as the current calendar date for the initial Case Management Conference, would be appropriate. To that end, the Parties hereby stipulate to, and respectfully request that the Court enter an Order vacating those deadlines. Further, if the Court deems it necessary and appropriate, the Parties stipulate that the Case Management Conference, and all related deadlines, as well as to responsive pleading deadlines for all such pleadings not yet filed, be continued and not scheduled for a period of not less than sixty (60) days from the date of this Stipulation. Thereafter, in the event that settlement has not consummated and this matter has not been dismissed within that period as presently anticipated, and if the Court deems it necessary and appropriate, the Parties stipulate to the setting, on or after October 21, 2021, of a hearing on an Order to Show Cause Re: Dismissal.

### **PRIOR EXTENSIONS**

Plaintiff ADVANCE LIFTS, INC., and Defendant FOLIO3 SOFTWARE, INC., have previously requested and been granted extensions of time to file responsive pleadings. [Dkt #23]

In addition, all Parties have previously been granted an extension of time to meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan. [*Id.*]

Except for the foregoing the Parties have not previously sought any extensions of time relating to any other matters or events.

### **CONCLUSION**

The Parties make this Stipulation and request in good faith, in the interests of judicial efficiency, and not for the purpose of improper delay.

In summary, the Parties stipulate, and request the Court enter an Order, that:

1. Vacates all deadlines regarding filing of responsive pleadings, and meeting and conferring re: initial disclosures, early settlement, ADR process selection, and discovery plan;
2. Vacates the Case Management Conference of September 16, 2021, and all filing dates relating thereto; and,
3. If deemed necessary and appropriate, sets a date on or after October 21, 2021 for hearing on an Order to Show Cause regarding Dismissal.



**DECLARATION OF DAVID J. BEN-DOV**

I, David J. Ben-Dov, declare:

1. I am an attorney duly authorized to practice before all of the courts of the State of Illinois, and, on June 9, 2021, was admitted by this Court to appear *pro hac vice* on behalf of Plaintiff Advance Lifts, Inc., in the above-captioned matter.

2. I make this Declaration pursuant to Local Rule 6-2(a) in support of the Stipulation set forth above. The matters set forth in the Stipulation are true and correct and, if called upon to testify, I could and would competently testify thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration is made on this 27<sup>th</sup> day of August, 2021, at Chicago, Illinois.

/s/ David J. Ben-Dov

David J. Ben-Dov

**FILER'S ATTESTATION**

Pursuant to Local Rule 5-1, I hereby attest that on August 27, 2021, I, David J. Ben-Dov, attorney with GOLAN CHRISTIE TAGLIA LLP, received the concurrence of Joshua Borger, attorney with BERLINER COHEN, Kevin Whiteford, attorney with SERLIN AND WHITEFORD LLP, and Juan D. Walker, Senior Corporate Counsel for ORACLE AMERICA, INC., in the filing of this document.

/s/ David J. Ben-Dov

David J. Ben-Dov

**~~PROPOSED~~ ORDER AS MODIFIED BY THE COURT**

Pursuant to the stipulation of the parties, and for good cause shown, IT IS SO ORDERED, that :

1. All deadlines regarding filing of responsive pleadings, and meeting and conferring re: initial disclosures, early settlement, ADR process selection, and discovery plan, are hereby vacated;

2. The Case Management Conference of September 16, 2021, and all filing deadlines related thereto, are vacated; and,

3. ~~A hearing on an Order to Show Cause Re: Dismissal is set for \_\_\_\_\_, 2021,~~  
at \_\_\_\_\_ a.m./p.m. If a stipulation for dismissal is not filed sooner, the parties shall file a joint status report on or before October 14, 2021 advising the Court as to the status of the settlement.

Dated: September 8, 2021

  
Honorable Sandra Brown Armstrong  
Senior United States District Judge